



STATE BOARD OF EQUALIZATION STAFF LEGISLATIVE BILL ANALYSIS

Date Introduced	02/21/02	Bill No:	SB 1702
Tax:	Business	Author:	Peace
Board Position:		Related Bills:	

BILL SUMMARY

This bill would authorize investigators of the State Board of Equalization (Board) whose primary duty is the investigation of felony tax evasion cases to exercise the powers of arrest of a peace officer and the power to serve warrants, as specified.

ANALYSIS

Current Law

Under existing law, Section 15604 of the Government Code requires the Board to enforce the tax laws of the State of California. Specific tax law enforcement authority is contained throughout the Revenue and Taxation Code, including, but not limited to, the Sales and Use Tax Law, Cigarette and Tobacco Products Tax Law, Alcoholic Beverage Tax Law, and the Diesel Fuel Tax Law. Existing law provides criminal and civil penalties, including fines and incarceration, for violations of the laws administered by the Board.

Existing law provides limited peace officer authority to specified persons employed by various departments of state government. Such persons may exercise the powers of arrest of a peace officer and the power to serve warrants during the course and within the scope of their employment if they receive a course in the exercise of those powers. Current law includes those employed and authorized by the State Banking Department, Department of Savings and Loan, Department of Real Estate, State Lands Commission, the Public Utilities Commission and the Department of Insurance. Notwithstanding any other provision of law, persons designated with limited peace officer status are prohibited from carrying firearms altogether. (Penal Code Section 830.11)

Proposed Law

This bill would amend Section 830.11 of the Penal Code to allow persons employed as investigators by the Board, provided that the primary duty of these persons is the investigation of tax evasion, to exercise the powers of arrest of a peace officer as specified in Section 836, and the power to serve warrants as specified in Sections 1523 and 1530 during the course and within the scope of their employment, if they receive a course in the exercise of those powers pursuant to Section 832.

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The authority and powers of the persons employed as investigators by the Board would be extended to any place in the state.

Background

The Investigations Division (ID) administers the Board's criminal investigations program. The ID plans, organizes, directs, and controls all criminal investigative activities for the various tax programs administered by the Board. The goal of the Board's ID is to identify tax evasion problems, identify new fraud schemes, and actively investigate and assist in the prosecution of crimes committed by individuals who are violating the laws administered by the Board.

The nature of these criminal cases requires investigation by specialized law enforcement personnel, specifically trained in these types of crimes. However, when investigating these crimes, investigators are often denied access to criminal history information because they are not peace officers. Also, due to a lack of peace officer powers, Board investigators have no authority to issue misdemeanor citations or to access Department of Motor Vehicles information. To overcome such restrictions, the Board contracts with the Department of Justice and the California Highway Patrol for law enforcement services.

Under existing law, any person desiring new peace officer status after January 1, 1990, is required to request the Commission on Peace Officer Standards and Training (POST) to undertake a feasibility study regarding designating that person or persons as peace officers. Any such study must include, but is not limited to, the current and proposed duties and responsibilities of the proposed peace officers employed in the category seeking the designation change, their field law enforcement duties and responsibilities, their supervisory and management structure, and their proposed training methods and funding sources.

In 1997, the Board contracted with POST to conduct a management review of its four investigative programs; sales tax, cigarette tax, alcoholic beverage tax, and diesel fuel tax. The study assessed the organizational structure and operations of the Board's investigative functions to ensure their ability to perform high-quality and effective investigations in the most efficient manner possible. The study included interviews with Board personnel from the various investigative units, in addition to personnel from the Department of Justice, other state agencies, district attorney's offices, and local law enforcement agencies. Investigators were questioned about their current caseload and status of their cases. Questions also included job responsibilities, training they received, and knowledge of basic investigative process. Additionally, investigators were asked for input regarding potential changes to improve investigative functions of the Board and their respective jobs.

The POST report issued May 22, 1998 concluded, among other things, that the Board seek limited peace officer status pursuant to Section 830.11 of the Penal Code for Board investigators involved in criminal tax fraud cases. POST believes limited peace officer status will allow Board investigators to conduct complete investigations without the necessity to regularly use outside agency support for basic investigative procedures. POST concluded that this would lead to increased efficiency and effectiveness in

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conducting criminal tax fraud investigations and reduce the potential for liability. POST further recommended that the Board adopt an operating policy that requires uniformed peace officer presence in situations requiring a peace officer, such as arrests and search warrants.

In General

At the November 28, 2001, Legislative Committee Meeting, the Board adopted a proposal similar to this bill as part of its 2002 Legislative Package. The Board's proposal is intended to grant limited peace officer status in accordance with POST's recommendation. In addition, it would increase the effectiveness and efficiency in conducting tax fraud investigations by providing ID investigator's access to criminal information, the investigation training programs available to limited peace officers, the ability to seize evidence in plain sight, and the ability to issue misdemeanor citations.

COMMENTS

1. **Sponsor and purpose.** This bill is sponsored by Senator Peace and is intended to grant limited peace officer status to the Board's ID investigators in accordance with POST's recommendation.
2. **This measure would empower the Board's ID investigators with the ability to:**
 - seize plain-view evidence encountered in responding to crime or search scenes;
 - withhold from release, document requests made under the Information Practices Act, which relate to an active criminal tax evasion investigation;
 - issue misdemeanor citations;
 - obtain criminal history information from the California Law Enforcement Telecommunications System on suspects and obtain other criminal history information from allied law enforcement agencies when conducting joint criminal investigations;
 - require participation in basic, intermediate, and advanced investigative training courses and retain available space on an as-needed basis;
 - gain credibility with law enforcement personnel; and
 - promote a reciprocal exchange of information with law enforcement.

As such, Board investigators would have the ability to conduct complete investigations without the necessity to regularly use outside agency support for basic investigative procedures. In addition, such authority would lead to increased efficiency and effectiveness in conducting criminal tax fraud investigations and reduce the potential for liability.

3. **Limited peace officer authority is a vital component of the Board's ID.** In accordance with POST recommendations, the new division within the Board is responsible for all criminal investigations of non-Board personnel. As recognized by POST, the new division has made strides to increase the effectiveness and efficiency of Board investigative functions and has placed a new focus on team

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building, the fostering of teamwork, and improved investigative relationships. The ID has also been responsible for developing and implementing policies and procedures regarding evidence collection and storage.

4. **This measure does not seek the full peace officer status granted to Franchise Tax Board in 1997 (Senate Bill 951 (Johnson) Chapter 670).** This bill would not provide Board investigators the authority to carry firearms or enhance retirement benefits. Although the need for outside law enforcement would diminish, the Board would specifically adopt a policy in which a full peace officer would be involved in cases involving staff safety.
5. **This bill would not lead to unnecessary and intrusive investigations of ordinary taxpayers.** Though the ID would review and revise the current policy concerning case screening and supervision of criminal cases under investigation, the Board would continue to use the current high standards for determining if reasonable and probable cause exists to investigate whether or not a crime is being committed or has been committed. This measure would in no way weaken any taxpayer rights contained in current law.
6. **Suggested amendments.** This bill would provide limited peace officer status to persons employed as investigators by the State Board of Equalization, provided that the primary duty of these persons shall be the investigation of felony tax evasion cases. However, the Board currently does not have an "investigator" classification. In addition, the ID investigates misdemeanor as well as felony cases, and not all enforcement activities involve a "case". As such, it is recommended that the bill be amended as follows:

830.11. (6) Persons employed ~~as investigators~~ by the State Board of Equalization, provided that the primary duty of these persons shall be the investigation or enforcement of criminal tax evasion matters relating to the provisions of law administered by the State Board of Equalization of felony tax evasion cases.

COST ESTIMATE

Enactment of this measure would not have any impact on the Board's administrative costs.

REVENUE ESTIMATE

The provisions of this bill should have a positive impact on the state excise tax collected due to decreased evasion. However, the Board has no way of measuring the potential impact these provisions may have, and therefore, cannot provide an estimate at this time.

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